

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON AGRICULTURE

Call to Order: By **CHAIRMAN DONALD L. HEDGES**, on February 13, 2001 at 3:25 P.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Donald L. Hedges, Chairman (R)
Rep. Linda Holden, Vice Chairman (R)
Rep. Ralph Lenhart, Vice Chairman (D)
Rep. Darrel Adams (R)
Rep. Norma Bixby (D)
Rep. Gilda Clancy (R)
Rep. Dave Gallik (D)
Rep. Kathleen Galvin-Halcro (D)
Rep. Christopher Harris (D)
Rep. Verdell Jackson (R)
Rep. Jim Keane (D)
Rep. Larry Lehman (R)
Rep. Holly Raser (D)
Rep. Clarice Schrumpf (R)
Rep. Frank Smith (D)
Rep. Butch Waddill (R)
Rep. Karl Waitschies (R)
Rep. Merlin Wolery (R)

Members Excused: Rep. Rick Dale (R)

Members Absent: None

Staff Present: Krista Lee Evans, Legislative Branch
Robyn Lund, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HJ 21, 2/9/2001; HB 495,
2/9/2001; HB 498, 2/9/01
Executive Action: HB 464, HB 397, HB 387, HB
211, HJ 6

HEARING ON HJ 21

Sponsor: Representative Rick Laible, HD 59

Proponents: Ronald Buentemeier, Stoltz Land and Lumber Company
Cary Hegroberg, Montana Wood Products Association
Mary Allen, Western Environmental Trade Association

Opponents: None

Opening Statement by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 0.8}

Representative Rick Laible, HD 59, stated that the Montana constitution states that the legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources. In the summer of 2000 the Bitter Route valley experienced a catastrophic fire storm which destroyed over 300,000 acres of land and 70 homes. He considers to be unreasonable and unnecessary. Under current guidelines management burns are not allowed during the summer nor in the winter, which would be the safest time. While forest managers are waiting for the perfect conditions to burn the forests are continuing to build up fuel to dangerous levels. All forest lands will burn at some time and the severity of that burn and the impact to air quality is directly dependant on the amount of fuel building up within the forest areas. Allowing a gradual burning of forest lands over a longer period of time will lessen the impact to our air quality and reduce the potential for fires. There is a compelling interest to burn gradually. Even though some degradation may occur, reduction of fuel loads, as needed, will reduce the amount of the fuel in our forests, lessen the impact of forest fires, and at the same time protect our constitutional rights. HJ 21 will allow us to find a balance between the responsibility for a clean and healthful environment and the protection of natural resources and our way of life.

Proponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 4.1}

Ronald Buentemeier, Stoltz Land and Lumber Company, stated that they have difficulty in the fall finding a burning time when they can dispose of slash. The national forest is talking about burning lots of acres, they seem to think that they are going to be exempt from the air quality laws. We need to come up with

some way to satisfy the needs of the management of the forest and also the needs of the clean air that we all want to have. He thinks that it is also important that this study look at ways to utilize the material, possibly by turning it into a wood fiber product.

Cary Hegroberg, Montana Wood Products Association, said that the best way to address this issue would be through an interim study. They are encountering significant problems trying to reconcile all these societal goals and needs with reference to managing our forests. There are laws that govern slash disposal. When it is safe to burn the slash, that is the time of the year when we tend to have air quality restrictions. The same problem comes with prescribed burning. This is a good approach to find that balance.

Mary Allen, Western Environmental Trade Association, said that they support this resolution because it brings a balanced approach.

Closing by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 9.5}

Rep. Laible said that, in the last 2000 wildfire season, 120,000 tons of nitrous oxide was released into the atmosphere. At the Coal Strip generating plant only 32,360 tons were released. This resolution will allow us to address the issue of reducing fuel in our forest at a balanced approach. We will be able to hear from all sides and come up with a comprehensive plan to allow us to approach this issue in a balanced and honest way. It is good for the environment of Montana.

HEARING ON HB 495

Sponsor: Representative Alan Olson, HD 8

Proponents: Jim Mockler, Montana Coal Council
Leo Berry, Burlington Resources
Kim Kuzara
Mary Allen, Western Environmental Trade Association

Opponents: Ellen Pfister, rancher
Ressa Charter, Northern Plains Resource Council

Opening Statement by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 10.8}

Representative Alan Olson, HD 8, said that he is hoping that HB 495 and the fiscal note will be drastically amended to take out some of the cost. The bill is an act revising laws governing mining, providing for a simple transfer of a revoked coal or metal mine operating permit. What this bill will do is if the state revokes a mining permit, the permit reverts back to the state. The state takes ownership of the permit, but not of the mining facility. There is a five-year window of opportunity where someone can get the permit without having to go through the complete permitting and EIS process all over again. There was an instance at the Bull Mountain Mine that caused him to bring this bill forward. When the mine was originally permitted, the process took approximately five years and eight million dollars to complete. During that five-year period that coal market had dried up. The company that was permitting the mine sold the permit to another company. That company was under-funded and under-insured and their permit was revoked. The mine is still an economical prospect. This bill would allow someone else to come in and apply for that permit and save a lot of money. Along with that will come jobs and taxes. When the state revokes a permit they will have to maintain the monitoring functions as addressed in the original permit, this is the biggest part of the fiscal note. His original intention for paying for this is that it would come through grants. Those are fees that mines pay in. He said that he had worked with the DEQ on this. He read through the bill with the amendments.

Proponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 21.3}

Jim Mockler, Montana Coal Council, stated that this bill seems to make logical sense. He feels that this really only applied to one situation. It makes sense to get that mine back into operation. The delays caused by saying the permit is revoked and you have to start over really accomplish nothing.

Leo Berry, Burlington Resources, said that Burlington Resources is the owner of the property that is being discussed. The company spent eight million dollars developing an application to open up the coal mine. They received a permit which was then transferred to another entity that started mining operations. Unfortunately they were under-capitalized and weren't able to continue for any length of time. The permit was revoked. HB 495 is a way to hold that permit to see if another applicant is willing to come by and take over those responsibilities. It seems a waste to spend the money to secure a permit and then have it for not. This will bring jobs back to the area. It makes sense to do this.

Kim Kuzara stated that he encouraged having this bill drafted. He did this for the following reasons: He has a small ranch close to the mine; he did a substantial amount of environmental monitoring associated with the mine; he is involved in the process of trying to put a new permit application together to try and reopen the mine. The state has told him that they don't have the money needed to do the reclamation. The need to continue monitoring is a must. The DEQ staff is not qualified to check the potential damages after the monitoring has stopped. The purpose of this bill is to make sure that the monitoring continues. It will provide protection to the neighbors of the mine.

Mary Allen, Western Environmental Trade Association, said that not revoking a permit is a cost effective and common sense approach.

Opponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 32.8}

Ellen Pfister, rancher, submitted written testimony.

EXHIBIT (agh36a01) She also submitted a copy of the federal Surface Mining Control and Reclamation Act of 1977.

EXHIBIT (agh36a02)

Ressa Charter, Northern Plains Resource Council, said that he had lived and ranched on top of the coal pits at issue. Things that are sometimes done with the mining laws can have adverse affects on Montana's agricultural community. One of the best affects of having people apply for these permits is that under-capitalized companies don't have the opportunity to come onto his ranch and fiddle around and then just take off. It is also an issue that the state has no place to own the property of this permit. It would be a conflict of interest. The creditors are kind of eyeing this permit as something to make up on the debts that the company had left. This clearly shows that this is a piece of property that the state government has no right to.

Questions from Committee Members and Responses:

{Tape : 1; Side : A; Approx. Time Counter : 41.3}

REPRESENTATIVE RALPH LENHART asked a question of the sponsor. On line 28, page 1, he was wondering about the adequate bonding, how much bonding would be adequate? **Rep. Olson** would decide what was adequate as far as bonding on their estimates of reclamation.

REP. LENHART then asked how long a mine operating permit is good for. **Rep. Olson** replied five years.

REPRESENTATIVE LARRY LEHMAN asked, when a mining permit is applied for, approved, and dropped, then some other entity can come in within a five-year window and apply for that permit without having to go through all the environmental impact statements all over again, is that correct? **Rep. Olson** replied that the permit in this instance was not dropped, it was revoked by the state. In five years, as far as the EIS is concerned, geologically and hydrologically things aren't going to change to a sufficient degree to warrant another EIS. **REP. LEHMAN** asked if he had the general idea of what the bill was proposing correct. **Rep. Olson** said that is correct. **REP. LEHMAN** said that there was some referral to the possible resurgence of this mine. At this point in time is there in fact an entity interested in reopening this mine? **Rep. Olson** said that he is aware of some individuals who could be interested in reopening this mine. **REP. LEHMAN** asked if there is an effective date for this bill, should it be approved. **Rep. Olson** said that the effective date is immediately upon passage.

REPRESENTATIVE HOLLY RASER asked if it was correct that there are two parts to the permitting process, one is the EIS and the other is the capitalization. **Rep. Olson** replied that that is all part of the permit. **REP. RASER** said that she can see where it makes sense to not have to go through the EIS again, but she is concerned about letting the financial part of the permitting go. **Krista Lee Evans** replied that on page 2, under 6A of the amendments, the only way a permit can be transferred to a new operator is if the new operator provides proof of site ownership or control of adequate bonding as required. **REP. RASER** clarified that all the financial obligations that have to be taken care of under the first permit have to be proven again, so the only part that we would be waiving is the EIS. **Ms. Evans** said that the bonding would be covered in the transfer. She is not sure that that is all of the financial portions that are considered, but she thinks that with bonding they have to consider reclamation and they have to put up enough money to cover that. She also pointed out that this is not necessarily waiving the MEPA requirements. They are waived unless the department determines that the operation has caused or may cause significant impacts that have not been analyzed previously. **REP. RASER** asked, under current law, when a permit is revoked, who is to maintain the monitoring status? **Rep. Olson** said that when a permit is revoked the operator is generally out of business, the DEQ forfeits the bond and goes in to start reclamation. There is no monitoring. **REP. RASER** said that in the bonding the reclamation is paid for, so they close everything, seal up the wells, et cetera. Is that correct? **Rep. Olson** replied that he wasn't sure where the well plugging orders came from. In his discussion with the director of DEQ, she was not aware that those wells were plugged.

REP. RASER asked if it was possible that the company that wants to buy the permit could pay for the monitoring that the state is going to be obligated to do in order to keep the permit open.

Rep. Olson thought that was a good idea and he referred it to Mr. Kuzara. **Mr. Kuzara** said that in this instance, had the permit been followed by either the state or the operator, the wells would still be there. Through some snafu those wells were very quickly plugged and abandoned.

REPRESENTATIVE KATHLEEN GALVIN-HALCRO asked the sponsor if there was anything in this that would prevent the original permit holder from getting this permit again. **Rep. Olson** believes that is in there. Under 2A of the amendments it would deal with this.

REP. GALVIN-HALCRO then asked what happens to the bonding money that was paid to the state. **Rep. Olson** referred that question to Mr. Mockler. **Mr. Mockler** said that that is what a bond is for, to provide the successor to be able to carry out the reclamation. You are required to put up a bond that would require monitoring after you close the area. The money should have been in DEQ, but he doesn't know what DEQ did with it. **REP. GALVIN-HALCRO** asked why this particular permit was revoked. **Rep. Olson** said that it was probably due to neglect and violations of the operator.

REPRESENTATIVE BUTCH WADDILL asked a question of the sponsor. As he understands it, the fiscal note was for half a million dollars, where will that be coming from? **Rep. Olson** replied that it would be coming out of the general fund. On that fiscal note, when the amendments are adopted, a new one will be generated.

REP. WADDILL clarified that this addresses one mine right now.

Rep. Olson said that at this time it specifically addresses one mine.

REPRESENTATIVE VERDELL JACKSON asked a question of Ellen Pfister. Would she object to a similar situation if the mine was someplace else? **Ms. Pfister** said that you are setting a precedence for mines across the state. The DEQ has spent \$10,000 so far on reclamation out of the bonded money. There is \$418,000 left and they are in the middle of phase two of reclamation projects.

REP. JACKSON said, if there is a mine that has an asset potential and has been closed down and would be cheaper to reopen that mine rather than to mine someplace else, would this be a good practice to encourage. **Ms. Pfister** is not sure that she thinks it would. This is not good practice or policy. You would never be through with anything, it would always be open. There would always be someone with another five years. **REP. JACKSON** asked, in reference to the surface mining act, does this specifically violate part of this act and, if so, which part? **Ms. Pfister** replied that the SMA has many hoops that you have to go through

before you finally revoke a mine permit. Revocation is the final termination. There is a section in there that says that any person who wishes to mine coal must apply for a permit.

REP. JACKSON asked the same question of a proponent. **Mr. Berry** said that the way the process works is that Montana has a reclamation program, but in 1977, congress passed the surface mining reclamation program. In order for the state to maintain priority they had to submit the program to the feds to be approved. It is an approved program. The federal government has no control over this particular mine because there is no federal land involved, but the state's program is responsible for administering their approved program. In order for there to be a problem the federal government would have to say that this act would throw the state's program out of compliance. He doesn't know anything in the federal program that would cause that to happen. **REP. JACKSON** asked if Mr. Berry could think of any unintended consequences that would come out of this bill.

Mr. Berry said that he can't think of one. The DEQ maintains control over whether or not a permit can be transferred to another entity. They will review all of the normal application procedures to see if the applicant is qualified.

REPRESENTATIVE KARL WAITSCHIES sees that this bill says that the state will now be responsible and hold the mine open and monitored on the chance that someone will come and pick up the permit. **Rep. Olson** said that is not the case. The state can start reclamation as soon as they want. Once reclamation reaches a certain point, then things change. **REP. WAITSCHIES** said that he heard that this mine has spent over half a million dollars in reclaiming it. **Mr. Olson** replied that he had not said that.

REP. LEHMAN said that he would think that there is always the possibility of other mining permits being revoked. Is there any reason why you wouldn't pose this bill not just for one operation, but for similar situations in the future that may occur? **Rep. Olson** said that he had had this bill drafted around a particular mine, but it is not totally limited to that one mine. **REP. LEHMAN** asked, would this bill, if passed, be seen as a precedent in statute that would allow for future situations. **Rep. Olson** replied that we are setting out some guidelines, but he didn't know if he would call it a precedent.

REP. RASER said that if a permit is revoked, taken over by someone else and their permit is revoked, it could extend this time past the five year limit. Is this a possibility?

Rep. Olson stated that he doesn't see that as a possibility.

REP. RASER asked how long the information for an EIS valid.

Ms. Evans replied that an EIS is developed on site-specific concerns that the agency is addressing. In this bill it says that, if it is determined that there are significant changes, another MEPA analysis has to be done by the department. The way she interprets this bill and amendment is that the department will determine whether or not the environmental information is still adequate and accurate. If they feel that it is not, then they can require another one be done. **REP. RASER** is concerned about having a lot of language that could be addressed more simply by saying that everything goes through as usual, but that if someone wants to take over the permit they can use some of the EIS that has been done. **Ms. Evans** doesn't believe that there is anything in law that would preclude them from doing that now.

REPRESENTATIVE FRANK SMITH asked a question of Ms. Pfister dealing with the handout that she had passed out. Would this apply? **Ms. Pfister** said that it probably would, but she isn't sure that it would address the situation where you had a permit revocation. **REP. SMITH** said that it doesn't say anything about revocation, it just says no transfer or sale. **Ms. Pfister** doesn't think that the contemplation of an assignment of a permit after revocation is in there. The usual is that it is a normal transaction of business, this is certainly not a normal transaction.

REPRESENTATIVE DAVE GALLIK asked a question of the sponsor. If there is tail liability, does this let the revokee off on the hook for potential tail liability from an environmental standpoint? **Rep. Olson** asked for clarification of tail liability. **REP. GALLIK** said that it would be who is going to ultimately rehabilitate the land. If there is some tail liability as a result of this revoked permit, does the initial permittee get off the hook for that? **Mr. Berry** replied that what would happen is that the new permittee would have to come in and place a bond to cover the implementation of the reclamation plan. That old bond and liability would go away, but it would be replaced with a new bond and liability with the new permit operator. **REP. GALLIK** clarified that if there is some environmental liability that maybe the bond didn't cover on the revoked permit, will the first permittee still be on the hook for any of that potential liability, versus the new bond and permittee that takes over. **Mr. Berry** said that there shouldn't be that situation because what they are taking over is the permit and there is some liability related to that permit, they are taking over that liability, whatever it might be, and the bond will cover that liability. What you are doing is substituting a new permittee and new bond for the old permittee and old bond. **REP. GALLIK** clarified that is there is liability the new permittee has

it and the revoked permittee doesn't have it. **Mr. Berry** said that is right.

Closing by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 23.9}

Rep. Olson said that this bill is good for Montana, jobs and taxes. We can't cure what has happened in the past. His discussions with the director of DEQ were a learning experience. He has all the confidence in the world that the mine will again do a good job. The concerns have been answered time after time, but to shut down the potential because of what someone has done in the past without giving someone else the opportunity to come and make an operation, make things better for us. This could lead to other development. We need to have some monitoring out there.

HEARING ON HB 498

Sponsor: Representative Gary Branae, HD 17

Proponents: Mike Murray, L & C Company
Don Stettler, Richland County Commission

Opponents: None

Opening Statement by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 27.9}

Representative Gary Branae, HD 17, brought forward a simple bill that deals with charges for solid waste services. This bill would help solid waste districts do three things: Improve their service, hold costs down, make charges for their customers more equitable. Currently solid waste district may assess charges on only one of three different factors: The size of the vehicle used to dispose of the waste, the volume or weight of the waste, or the cost incentives or penalties applicable to waste management practices. This bill is requesting that the solid waste districts may not only be able to continue to use any one of these three methods, but also that they may be able to use a combination of these methods. This will allow solid waste districts to look at new programs. One of these is the pay-as-you-throw program. Some districts would like to use a modified pay-as-you-throw program where users pay an annual fee for a

predetermined amount of waste, any further disposal would be charged to the resident on a per pound or per ton basis. This would encourage users to limit the amount of garbage that they have, possibly encourage some recycling to hold down costs. It would allow the districts to maintain a predictable flow of revenue.

Proponents' Testimony:

{Tape : 1; Side : B; Approx. Time Counter : 31.3}

Mike Murray, L & C Company, stated that this bill clarifies that solid waste districts may use a combination of all ready prescribed service charges to assess customers for the solid waste district. He talked about the pay-as-you-throw method of charging that had been previously mentioned. The benefits of this would be that the elderly would pay less than a roofing business; those who dispose more will pay more. Because it costs more to throw more, it will encourage recycling.

Don Stettler, Richland County Commission, said that the solid waste district in his area would rather have the local discretion than have someone tell them how to charge.

Questions from Committee Members and Responses:

{Tape : 1; Side : B; Approx. Time Counter : 35.5}

REPRESENTATIVE LARRY LEHMAN asked, of the sponsor, is this strictly for land fill waste operations. **Rep. Branae** said that was correct.

REPRESENTATIVE GILDA CLANCY asked, of the sponsor, how much does the average household use in a year's time? **Rep. Branae** believes that it is two tons per year. **REP. CLANCY** asked if at the present time there is no base fee charged for disposal of solid waste. **Rep. Branae** said that presently they could be charge in three ways, a flat rate, according to the weight, or based on costs, incentives and penalties applicable to waste.

REPRESENTATIVE JIM KEANE asked how does the rate for a community dumpster get applied, as is done in Helena. **Mr. Murray** replied that Helena has a transfer station, not a waste disposal district. In Helena each residence is paying \$120 per year to have their refuse picked up.

REPRESENTATIVE DON HEDGES asked how often the garbage would get weighed to determine the fee. **Mr. Murray** replied that, in order to charge by the tonnage, they would have to weigh it every time.

REP. HEDGES asked if the garbage truck would charge you more on rainy days because the garbage is wet. **Mr. Murray** said they have found that most people only haul garbage in on nice days, although theoretically that would be correct.

REPRESENTATIVE FRANK SMITH pointed out that line 5 deals with fees to a mobile home park. Would this put a hardship on them? **Mr. Murray** replied that in his experience, mobile home park is allowed to be their own solid waste system. They will be allowed to pay a tonnage fee. **REP. SMITH** said that when people are moving the generate more garbage, how is that figured in? **Mr. Murray** replied that the national average is two tons of garbage per permit per year regardless of how mobile they are.

REPRESENTATIVE DARREL ADAMS asked why solid waste districts establish their own fees without getting a law passed so that they can do that. **Mr. Murray** said that, by statute, solid waste districts are regulated, which are government run as opposed to private enterprise districts.

Closing by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 45.7}

Rep. Branae thinks this is a good bill. It addresses some issues of fairness and efficiency. It could lead to recycling. He encourages some positive action for this bill.

{Tape : 2; Side : A; Approx. Time Counter : 0}

Committee bill discussion:

REPRESENTATIVE DONALD HEDGES introduced what he referred to as a black bill. This would be a committee bill to cover some problems that we have with the misplacement of livestock and he asked Mark Bridges from the Department of Livestock to explain the bill. **EXHIBIT (agh36a03)**

Mark Bridges, Board of Livestock, said that last summer the Montana Supreme Court passed a decision, State vs. Eagle Speaker, that they are trying to fix. This says that the state can't prosecute for felony theft an Indian who steals livestock on a reservation and attempts to sell it off the reservation. The result of that is that Montana can't prosecute Indians or non-Indians if the property owner is Indian, for attempting to sell stolen property in Montana if the theft occurred outside of Montana's criminal jurisdiction. Reservation livestock are at an increased risk of theft and transportation.

Questions from the committee:

REPRESENTATIVE DAVE GALLIK asked if this is absolutely essential for the state of Montana to have this specific law as a result of one court case or can we wait. **A representative from the attorney general's office** replied that it is necessary. If a non-Indian steals property from an Indian on a reservation, the only person that would prosecute that case is the federal government, they are the only ones with jurisdiction. That is the purpose behind this bill.

REP. HEDGES said that, to the best of his knowledge, the tribal nations of Montana support this bill.

REPRESENTATIVE NORMA BIXBY said that some of the tribes don't support this legislation. Evidently the office contacted the wrong people, so the tribes don't all support this. The Blackfeet Nation is saying that they disagree with this bill. There are also some concerns with the Crow Tribe.

REPRESENTATIVE FRANK SMITH said that Fort Peck wants to go along with this.

REP. BIXBY thinks this is a bill that needs to be reviewed by the tribes because of the governor's promise to keep the tribes informed and let them be consulted on things that would affect them. Since there are several tribes not in agreement with this she thinks this bill should be tabled.

REP. HEDGES suggested that we have a committee bill drafted, take it to the governor, they can see what they can do with it in two days, knowing that we have to act on it on Thursday.

REP. GALLIK thinks that, given the last minute nature of this, this is a terrible way to do business. He urges that we not do a committee bill.

REPRESENTATIVE LINDA HOLDEN suggested to call the tribal leaders and find out how they feel.

REP. BIXBY replied that the Blackfeet were aware of this bill, but there has not been enough time for the tribes to review the Blackfeet information before we take action on this. The timing is really bad.

REP. HEDGES said that we understand the problem of this falling through a crack and we don't want to give the appearance of steam rolling something through the process over the objections of our

constituents. He suggested that Krista walk us through what would be needed to draft a committee bill.

Ms. Evans said that in order for a committee bill to happen it has to pass by 3/4 of a vote by the committee. The request will then go to Mr. Petesch to be assigned to a drafter. It has to be drafted, go through legal, editing, just like the other bills, then be ready for introduction. The house rules do provide that you can vote for the request and the introduction at the same time. The time frame is short. She can get it drafted by morning, but she doesn't know if it is practical to get it through the process and reviewed by the tribes in two days.

George Oshenski said that he had called the attorney for the Salish-Kootenai tribe to get his opinion on this bill. The attorney had not had any chance at all to look at it and could not say whether it would be good or bad for the tribe. This is too fast for the normal process to be followed and it would prevent meaningful input from the tribes.

REPRESENTATIVE RALPH LENHART asked if it would be possible to go through this drafting process and then table the bill and bring it up after transmittal.

REP. HEDGES thought that we would have to act on it before transmittal.

REP. SMITH wanted to point out that the first draft that was sent to the tribes is not the one that the committee has.

REPRESENTATIVE JIM KEANE suggested that we vote on whether or not we want a committee bill first.

Sarah Bond, Attorney General's Office, wanted the committee to know that she had been in touch with many tribes. There in deed has been quite a bit of tribal notice. She said that she didn't believe that there is a Blackfeet resolution against this bill. She has talked with Flat Head, which have a different jurisdictional issue, so they don't have a "dog on this fight." She has also spoken with Pat Iron Cloud at the Fort Peck Law and Order Committee. Strong support has been indicated from many tribes. Nobody is trying to steam roll anybody.

REP. BIXBY doesn't believe that the tribal chair people really know the background on this case. There are probably issues. She feels that there is a process that needs to be followed and the tribes need the opportunity to review the case and facts of how it would impact them.

REPRESENTATIVE GILDA CLANCY also thinks that we are very premature in trying to push this through in two days. Out of respect to the tribes that haven't had a chance to review it, we shouldn't do this.

REP. GALLIK said that we are getting cross information. We may know that we are not trying to steam roll it, but it is going to look that way. It will seem that this legislature has no respect for tribal government. We have had the opportunity, everybody knew the rules and the cut-off dates, but somebody missed it. The rules are the rules. He strongly urges that the committee not do anything with this.

REP. HEDGES didn't think that there would be any damage done in having an official, formal bill drafted so that everyone is looking at the same thing. It would then go to the government, advertise for a hearing on Thursday and then it would go up or down on Thursday.

REPRESENTATIVE LARRY LEHMAN pointed out that we are here at 5:30, heard three bills, taken no executive action, and we only have one more day left for committee hearings. He can't imagine the load that this would put on Krista Evans. He is for dropping this.

REP. KEANE thinks we need to vote.

REP. GALLIK called for the question.

Motion/Vote: TO DO A COMMITTEE BILL. Motion failed 1-16 with Hedges voting aye.

EXECUTIVE ACTION ON HB 464

Motion: REP. LEHMAN moved HB 464.

Discussion:

REPRESENTATIVE KATHLEEN GALVIN-HALCRO asked if there were any amendments to this bill? One had been discussed at the hearing that would make the fees for both the livestock owner and the dog owner the same.

Krista Lee Evans said that there was not an amendment, a request for that was not made.

REP. GALVIN-HALCRO asked for a conceptual amendment to not more than \$500. The sponsor had said that she would be in agreement

to that amendment. She then moved that amendment and called for the question.

Motion/Vote: REP. GALVIN-HALCRO moved AMENDMENT TO HB 464. Motion passed unanimously.

Motion: REP. ADAMS moved that HB 464 AS AMENDED DO PASS.

Discussion:

REPRESENTATIVE MERLIN WOLERY is going to vote against the bill. He didn't think that we need to create more criminals. There is all ready a law in this area.

REP. SMITH is also going to vote against it. We have enough laws to protect that animals out there and he is concerned about what the ranchers in his area would say if he voted for it.

REP. ADAMS also thinks that this is not needed.

REP. GALLIK said that the whole idea behind this is not to make criminals out of anybody, but it is just to allow some common decency when somebody's dog is killed. It is a courtesy thing.

REP. LEHMEN said that whether this is a law or not, there are going to be some people who are going to have the courtesy to call you and there are going to be people who don't. This is something that can't be legislated. He doesn't feel that this law would make one bit of difference, so he will vote against it.

REPRESENTATIVE HOLLY RASER said that in every situation that she is familiar with where livestock was injured, the dog owner said that their dog wouldn't do that. She can see where there may be retaliation. She has a problem with this.

REP. ADAMS called for the question.

Motion/Vote: REP. ADAMS moved that HB 464 AS AMENDED DO PASS. Motion failed 8-11 with Bixby, Gallik, Galvin-Halcro, Harris, Jackson, Keane, Schrumpf, and Waddill voting aye.

By consensus of the committee that vote will be reversed to table the bill. HB 464 as amended was tabled.

EXECUTIVE ACTION ON HB 397

Motion: REP. JACKSON moved that HB 397 DO PASS.

Discussion:

{Tape : 2; Side : A; Approx. Time Counter : 34.4}

REP. JACKSON moved the amendments and then explained them. He said that the amendments were made in Missoula on Friday with a group of 15 people representing the water users, Trout Unlimited and the reservation.

REP. ADAMS moved the amendments.

REP. WOLERY asked if this is going to be submitted for the 59th legislature, should we put a 2002 in there.

REP. JACKSON said that it is going to be an annual report even though the legislature is not in session.

REP. GALVIN-HALCRO asked why they are skipping a whole legislative session to do this. Why not have it with the 58th session?

REP. JACKSON said that, in talking to the consensus council, when you involve the public the process can't be done in two years, so they stretched it out to four with the internal reports required.

REP. BIXBY asked who represented the tribes when the amendments were made?

REP. JACKSON offered a list of everyone who was at that meeting.
EXHIBIT (agh36a04)

REP. HOLDEN asked if there would be a new fiscal note.

REP. JACKSON said that would be discussed when we get to the bill.

REP. HEDGES asked if there would be added cost to the study since there had been a year added to the study time.

Jack Stultz said that these costs are considered to be annual costs. There is the possibility that the amount necessary to do some of the compilation of data could drop in the third and fourth year of the process.

REP. HEDGES said that the original bill terminated a year earlier.

Mr. Stultz said that there are some base costs for facilitation and those would continue in the third and fourth years and they would be estimated to be about \$35,000 per year.

REP. BIXBY said that she doesn't know the individual who had represented the tribe at the Missoula meeting. Not knowing that, she will have to vote against the amendments because of the testimony given by Clayton Matt at the hearing.

REP. JACKSON said that Mr. Matt had appeared as an informational witness, not an opponent. He later indicated that the tribe had not decided whether they were going to participate or not, but his testimony was not to support or oppose the bill at this time.

Motion/Vote: **REP. JACKSON** moved that **AMENDMENTS TO HB 397 DO PASS. Motion carried 15-4 with Bixby, Galvin-Halcro, Harris, and Smith voting no.**

Motion: **REP. JACKSON** moved that **HB 397 AS AMENDED DO PASS.**

Discussion:

{Tape : 2; Side : B; Approx. Time Counter : 1.3}

REP. SMITH said that he didn't know the tribal representatives at the Missoula meeting. He had spoken to Clayton Matt and at that time Mr. Matt didn't think that it would work. He would like to take his name off the list of sponsors.

REP. LEHMAN asked Mr. Stultz for his opinion, based on the testimony by Clayton Matt, for his opinion as to whether this can be successful. **Mr. Stultz** believes that it can be successful. There are situations similar to this that have actually aided the discussions that are going on with respect to the relationship between the state-based water rights and the tribal rights and has gotten everybody a little clearer as to the nature of the water use and all the different rights. It can be cooperative and complimentary. A special effort needs to be made to involve the tribes.

REP. WOLERY asked if this would be the beginning of a Clark Fork Water Compact. **Mr. Stultz** said that there are things that can come out of this that can be beneficial and can be picked up by the tribes and the Reserved Water Rights Compact Commission as positive elements to their discussions.

REP. SMITH asked what the hold up on their water compact had been when so many of the other reservations all ready have one.

Mr. Stultz said that they had been busy. They have been very successful and very busy, so some of it is just scheduling. The Federation of Salish and Kootenai Tribes is a very complex situation. The reservation is very complex in terms of land ownership and water rights.

REP. BIXBY said that the Salish-Kootenai tribal council has not acted on their compact and that so the question of whose water rights is still a question that needs to be answered. She would hate for there to be conflict and anger, which she could see coming out of this, because that process hasn't been followed through yet with them. **Mr. Stultz** responded that the hope is that the tribe will participate and that this process is guided in such a way as to not cause conflict. It focuses on things that can be helpful in understanding the nature of the water use in the basin, as well as improving that water use to make it easier for everyone in that basin.

REP. HOLDEN asked how long they had been working on their compact. **Mr. Stultz** believed since 1979.

REP. JACKSON asked for clarification of the three processes that are going on. This is a planning process. There is the judification process and the Water Compact Commission is working. **Mr. Stultz** replied that the tribal rights are based on federal law and so they are negotiated in a separate way from what is going on with the judification of the state based rights. State based laws are dealt with in the water court in Bozeman. Water management planning is something that is good to do any time and it is done all over the state. It is a matter of trying to identify ways in which you can better operate to make sure that you reduce the possibilities of conflict and can provide water for future use and development.

REP. BIXBY said that she would feel more comfortable with this bill if the Salish-Kootenai Council were made a part of the developing, but as it is, individuals that have been a part of the government process haven't been included. It would have been a better bill if everybody would have worked on it from the beginning, in the planning process and the council would have been a part of it.

Motion/Vote: **REP. JACKSON** moved that **HB 397 AS AMENDED DO PASS**. **Motion carried 11-8 with Bixby, Galvin-Halcro, Harris, Raser, Smith, Waddill, Waitschies, and Wolery voting no.**

EXECUTIVE ACTION ON HB 387

Motion: **REP. LENHART** moved that **HB 387 DO PASS.**

Discussion:

REP. GALLIK said that he will vote against this bill because it is just another designer crime. The current statutes should be adequate to prosecute these crimes.

REP. ADAMS asked **REP. GALLIK** how the existing penalties compare with what are in the bill. **REP. GALLIK** doesn't know for sure, but it looks pretty similar.

REP. LEHMAN gave the example of sugar beets. If some one wrecks a regular row of sugar beets you have got a small amount of money in damages. If it is a type of sugar beet that is being researched, the damage done has far-reaching consequences and is much more expensive because the research has to start all over again. He will vote for this bill.

REP. RASER asked how much of a problem this is. **REP. HEDGES** said that it is happening more. The dean of agriculture from MSU gave a copy of the directions on how to destroy crops that came off the Internet. There has been crop destruction. It is something that is better to have on the books earlier than later.

REP. ADAMS said that this would just be adding onto the animal one, so it is not really a new designer bill.

REP. HEDGES said that it is treating plant research as we treat animal research.

REP. KEANE is going to vote against the bill. If you had a lot invested in the sugar beets and it was a big thing and the guy gets caught, they are going to bring that to court. There are laws on the books to take care of it.

REP. SMITH will support this bill.

REP. GALLIK asked what criminal defamation is. Is it somewhere in the MCA? **Krista Lee Evans** said that these bills do go through legal review and if there is a term used that isn't defined it usually comes back to be fixed. The safeguards are set up to protect against that.

REP. HEDGES would think that if you took some pictures of a research facility and then doctored them and used them with the intent to show them at the worst possible angle, then you are generating a defamation of the research facility through the use of illegal pictures.

REP. SMITH asked if Pam Langley could respond to the question. **Ms. Langley** said that this was copied directly from a section of law in title 81. The references to animals were taken out and crop was put in. So far this has not been an issue with crops like it was with animals. She also stated that as far as a designer crime, this is just like the animal statute. The provisions are almost identical in sections two and three to the criminal mischief and criminal trespass. Section four is how you can recover your losses and court costs if you are damaged.

REP. LEHMAN can see the possibility of criminal defamation with plants as well as animals. He has no problem with that statement.

REP. ADAMS called for the question.

Motion/Vote: **REP. LENHART** moved that **HB 387 DO PASS AS AMENDED**. **Motion carried 15-4 with Gallik, Harris, Keane, and Raser voting no.**

EXECUTIVE ACTION ON HB 211

Motion: **REP. WADDILL** moved that **HB 211 DO PASS**.

Discussion:

REP. WADDILL moved and explained the amendments.

REP. HOLDEN called for the question.

Motion: **REP. WADDILL** moved that **AMENDMENTS DO PASS**. **Motion carried unanimously.**

Motion: **REP. WADDILL** moved **HB 211 AS AMENDED**.

Discussion:

REP. WADDILL submitted written testimony. **EXHIBIT (agh36a05)**

REP. WOLERY submitted information. **EXHIBIT (agh36a06)**

REP. HOLDEN asked, if you feel that it is so economically damaging, why are the grain growers in support of it.

REP. WADDILL heard wheat growers that were on both sides. The herbicide resistance seems to be the great advantage.

REP. SMITH said that in his experience, Round-Up stunts the grain for a short time.

REP. HEDGES said that Round-Up is a contact spray that will kill what it touches. 24D is a broad leaf spray that will wipe out everything that it touches and there are a number of additives that you can put with 24D that have a soil residual, then the root system will also die for a period of time.

REP. ADAMS said that he would oppose the bill. He showed some articles that he felt showed that there was a need and a market.

REP. LEHMAN is opposed to this bill for three reasons: All indications are that Round-Up Ready wheat is not going to be available for production for three to four years; there has been progress in terms of seed varieties being improved and as a result we have seen the yields going up; when the major farm organizations are opposed to this, they are very powerful groups who speak for a large number of people.

REP. RASER pointed out that we are not looking at food improvements, such as higher protein values. We are looking at herbicide resistance. The hybridization is a totally different process than what is in this bill. She is concerned about the smaller farmers who are trying to get into specialty markets. She feels that these specialty markets are where Montana needs to be. The moratorium sends the message to consumers that we are going to be really careful. We have a lot more to lose than we have to gain.

REP. LENHART said that one of the concerns of the small farmers are the GMO grains. It is too much of an unknown for them and they are afraid of it. They are concerned about losing their freedom of control over their crops.

REP. CLANCY doesn't want to put an economic burden on the grain growers, but she has always questioned the idea of GMO foods. She is going to support this bill.

REP. GALLIK also supports this bill. If the seeds aren't ready for four years, and we are allowing research to continue, then aren't we having a moratorium anyway? Why are they opposed to this if they can't plant for four years? This raised a red flag for him. The other concern that he has is the whole idea of getting tainted. Once tainted, you can't sell the product.

REP. WOLERY thinks that this sends a bad message to those doing research. It is driven on fear. There are no facts, it's based on feelings and stories.

REP. KEANE urges the committee to vote what they feel. He is going to oppose the bill. We have to move into the 21st century.

REP. HEDGES is going to oppose the bill for the following reasons: It should have been written cereal grains if we were truly concerned, we are picking on a single product line; GM cereal grains are more than just herbicide resistant. This tells the research community that we are not interested and yet we go begging for funds to support our research facilities. We need to educate ourselves and the consumers on the impacts of GMO food at all levels. It isn't putting the state of Montana at risk, it is allowing research to go unencumbered, in the mean time we need to make sure that we stay the course in providing good, reliable, safe food.

REP. KEANE called for the question.

Motion/Vote: **REP. WADDILL** moved that **HB 211 DO PASS AS AMENDED**. **Motion failed 8-11 with Bixby, Clancy, Gallik, Galvin-Halcro, Lenhart, Raser, Schrumpf, and Waddill voting aye.**

By committee consensus the vote was reversed to table the bill. **HB 211 was tabled.**

EXECUTIVE ACTION ON HJ 6

Motion/Vote: **REP. ADAMS** moved that **HJ 6 DO PASS**. **Motion carried 10-9 with Adams, Dale, Harris, Hedges, Holden, Keane, Lehman, Waitschies, and Wolery voting no.**

ADJOURNMENT

Adjournment: 6:55 P.M.

REP. DONALD L. HEDGES, Chairman

ROBYN LUND, Secretary

DH/RL

EXHIBIT (agh36aad)